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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/733,909

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Robert J. Wilson

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8476

39207

7590

07/09/2008

DARBY & DARBY (formerly Sacco & Associates)

P.O. BOX 770

CHURCH STREET STATION

NEW YORK, NY 10008-0770

EXAMINER

KATCHEVES, BASIL S

ART UNIT

PAPER NUMBER

3635

NOTIFICATION DATE

DELIVERY MODE

07/09/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENT@DARBYLAW.COM

patents@darbylaw.com

mcollazo@darbylaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/733,909	<b>Applicant(s)</b> WILSON ET AL.	
	<b>Examiner</b> BASIL KATCHEVES	<b>Art Unit</b> 3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-35,37-39 and 41-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-35,37-39,41-47,49 and 50 is/are rejected.
- 7) ☒ Claim(s) 48,50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The applicant has added new claims 41-51 in the paper dated 2/28/08. pending claims 29-35, 37-39, 41-51 are examined below.

The terminal disclaimer filed on 2/28/08 disclaiming the terminal portion of any patent granted on this application has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 29-33, 35, 49, 51 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,926,785 to Lamson.**

Regarding claims 29, 49, 51, Lamson discloses a stake having an elongated rigid body (fig. 1: 12), a hollowed head (at 16), a tapered tip (20), a sealing member (23) around the stake and extending radially away, wherein the upper portion comprises a frangible section (cupped 16) defined by a break point (section between 16 and 12).

Regarding claim 30, Lamson discloses a sealant (fig. 1: 18) disposed on the sealing member and on the side of the sealing member which is nearest to the tapered tip (fig. 3: see 18 closer to tip 22).

Regarding claim 31, Lamson discloses the sealing member as slidable along the length of the stake.

Regarding claims 32, 33, Lamson discloses the sealing portion as having a resilient flexible portion (18) forming a seal around the stake.

Regarding claim 35, Lamson discloses the break point as consisting of a hollowed portion (fig. 1: see hollowed cup 16).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 34, 39, 41-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,926,785 to Lamson.**

Regarding claim 34, Lamson discloses an embodiment with a transverse hole through the shaft (fig. 4: where pin 40 passes). However, the hole is located low in the stake, nearer to the tapered end. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to change the shape of the stake by lengthening the shaft of 30 to place the pin higher along the stake in Lamson because a change in shape is within the level of ordinary skill in the art absent

persuasive evidence that the particular configuration is significant (see MPEP 2144.04 (IV) (B)).

Regarding claims 39, 41, 42, Lamson discloses a stake having an elongated rigid body (fig. 1: 12), a hollowed head (at 16), a tapered tip (20), a slidable sealing member (23) around the stake and extending radially away, wherein the upper portion comprises a frangible section (cupped 16) defined by a break point (section between 16 and 12). Also, Lamson discloses an embodiment with a transverse hole through the shaft (fig. 4: where pin 40 passes). However, the hole is located low in the stake, nearer to the tapered end. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to change the shape of the stake by lengthening the shaft of 30 to place the pin higher along the stake in Lamson because a change in shape is within the level of ordinary skill in the art absent persuasive evidence that the particular configuration is significant (see MPEP 2144.04 (IV) (B)).

Regarding claim 43, Lamson discloses a flexible portion (18) on the sealing member around the stake.

Regarding claim 44, Lamson discloses the sealing member as having a resilient portion (18).

Regarding claim 45, Lamson discloses a ridge on the outer edge of the sealing member (see ridge at end near 14).

Regarding claim 46, Lamson discloses a channel (18) formed between the periphery of the stake and the outer rim of the sealing member and spaced from the periphery.

Regarding claim 47, Lamson discloses a sealant (fig. 1: 18) disposed on the sealing member and on the side of the sealing member which is nearest to the tapered tip (fig. 3: see 18 closer to tip 22).

### ***Claim Objections***

Claims 48 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Response to Arguments**

Applicant's arguments filed 2/28/08 have been fully considered but are moot under new grounds of rejections necessitated by the applicant's amendment.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot, can be reached at (571) 272-6777.

/Basil Katcheves/

Primary Examiner, Art Unit 3635